STATE OF MICHIGAN

COURT OF APPEALS

DONNA COMPEAU,

Plaintiff-Appellant,

v

ROBERT M. CURRIER, D.O., and ROBERT M. CURRIER, D.O., P.C., a/k/a NORTHERN EYE,

Defendants-Appellees,

and

ALPENA GENERAL HOSPITAL,

Defendant.

UNPUBLISHED
May 22, 2007

No. 274495
Alpena Circuit Court
LC No. 04-003455-NH

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition to defendants Robert M. Currier, D.O., and Robert M. Currier, D.O., P.C., on the basis that the expert who signed the affidavit of merit accompanying plaintiff's medical malpractice complaint was not qualified under MCL 600.2169(1) because he was a "specialist" and did not engage in the general practice of ophthalmology as defendant Currier[1] did. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Pursuant to MCL 600.2912d(1), a plaintiff (or the plaintiff's attorney) in a medical malpractice action "shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." Pursuant to § 2169(1)(a), if a defendant physician is a specialist, then the plaintiff's expert witness must specialize at the time of the occurrence in the same specialty. If the defendant physician is "a specialist who is board certified," then the expert witness must be "a specialist who is board certified in that specialty." Pursuant to § 2169(1)(b),

[1] The singular term "defendant" will be used to refer to defendant Robert M. Currier, D.O.

the plaintiff's expert, during the year immediately preceding the alleged malpractice, must have "devoted a majority of his or her professional time to either or both of the following:

> (*i*) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.
>
> (*ii*) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

For purposes of this statute, a "specialty" is "a particular branch of medicine or surgery in which one can potentially become board certified." *Woodard v Custer*, 476 Mich 545, 561; 719 NW2d 842 (2006). A subspecialty is "a particular branch of medicine or surgery in which one can potentially become board certified that falls under a specialty or within a hierarchy of that specialty. A subspecialty, although a more particularized specialty, is nevertheless a specialty." *Id*. at 562.

Defendant is a board-certified ophthalmologist. "Ophthalmology" qualifies as a "specialty" under § 2169 because one can potentially become board-certified in that particular branch of medicine. Defendant was practicing that specialty at the time of the alleged malpractice. "Ophthalmology" is "[t]he medical specialty concerned with the eye, its diseases, and refractive errors." *Stedman's Medical Dictionary* (28th ed). Plaintiff's theory of liability is that defendant performed unnecessary cataract surgery that resulted in complications that caused loss of vision.

Plaintiff's affidavit of merit was signed by Dr. Peter H. Morse, who is also a board-certified ophthalmologist. Dr. Morse testified in his deposition that he has "subspecialized in vitreoretinal disease"[2] for approximately 35 years. Since 1993, 90 percent of his clinical practice has been devoted to the "subspecialty" of retinal diseases. However, the American Board of Ophthalmology does not have a subspecialty certification for vitreoretinal surgeons.

The trial court ruled that defendant's medical practice involved the general practice of ophthalmology, but Dr. Morse was a specialist in the field of vitreoretinal diseases. Although he was not board-certified in a field other than ophthalmology, he "concentrated 90% of his practice on the area of vitreoretinal diseases and therefore is a specialist in that field and not one engaged in the general practice of ophthalmology." The court therefore determined that Dr. Morse was not qualified to provide the expertise necessary to execute the affidavit of merit. Accordingly, it granted defendants' motion for summary disposition.

---

[2] "Vitreoretinal" means "[p]ertaining to the retina and the vitreous body." *Stedman's Medical Dictionary* (28th ed). "Vitreous body" means "a transparent jellylike substance filling the interior of the eyeball behind the lens of the eye; it is composed of a delicate network (vitreous stroma) enclosing in its meshes a watery fluid (vitreous humor)." *Id*.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews de novo questions of statutory interpretation. *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004). To the extent that this issue concerns the trial court's ruling regarding the qualifications of a proposed expert witness, this Court reviews such a ruling for an abuse of discretion. *Woodard, supra at* 557. "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Id*., (citation omitted).

Dr. Morse was qualified under MCL 600.2169(1)(a). Defendant and Dr. Morse both specialize in the same specialty, ophthalmology. Both are board-certified in ophthalmology. Contrary to defendants' argument, vitreoretinal disease does not qualify as a "specialty" or "subspecialty" for purposes of § 2169, because vitreoretinal disease is not a branch of medicine in which one can potentially become board-certified. *Woodard, supra* at 561-562.

Dr. Morse was also qualified under § 2169(1)(b). During the year preceding the date of the occurrence, he devoted a majority of his time to the "active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty." Defendant is a specialist in ophthalmology and Dr. Morse devoted a majority of his time to "that specialty." The focus of Dr. Morse's practice on vitreoretinal disease does not alter the analysis. Vitreoretinal disease does not qualify as a "specialty" or "subspecialty" under the definitions adopted in *Woodard, supra,* because it is not a branch of medicine in which one can potentially become board-certified. *Id. at* 561-562. Although Dr. Morse's practice was concentrated on vitreoretinal disease, he was engaged in the active clinical practice of the same specialty as defendant, i.e., ophthalmology.

The trial court found that this case was comparable to *Decker v Flood*, 248 Mich App 75; 638 NW2d 163 (2001). However, the subsection at issue in *Decker*, MCL 600.2169(1)(c), regarding general practitioners, is inapplicable here because defendant is a specialist. Moreover, *Decker* does not use the definition of "specialist" that the Supreme Court adopted in *Woodard*. In addition, unlike the plaintiff's expert in *Decker*, Dr. Morse did not practice in a "specialty" or "subspecialty" that defendant did not.

Defendants argue that the present case is similar to *Hamilton v Kuligowski*, the companion case to *Woodard, supra*. In *Hamilton,* the defendant was board-certified in general internal medicine, specialized in general internal medicine, and was practicing general internal medicine at the time of the alleged malpractice. *Woodward, supra* at 556, 577-578. The plaintiff's proposed expert was also board-certified in general internal medicine. In the year preceding the alleged malpractice, however, he "devote[d] a majority of his professional time to treating infectious diseases, a subspecialty of internal medicine." *Id*. at 556, 578. The Court concluded that the proposed expert did not satisfy the "same practice/instruction requirement of § 2169(1)(b)." *Id*. at 578.

The important distinction between the present case and *Hamilton*, is that while treatment of infectious disease qualifies as a "subspecialty" according to the Court's definition, vitreoretinal disease does not. One can potentially become board-certified in the former, but not the latter. During the year preceding the date of the occurrence, Dr. Morse devoted a majority of his time to the "active clinical practice of the same health profession in which the party against

whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty," i.e., ophthalmology.

The trial court's determination that Dr. Morse was not qualified under § 2169 because he was a "specialist" in vitreoretinal disease is incompatible with the definitions adopted in *Woodard* and, therefore, was an abuse of discretion. *Id.* at 557. Accordingly, the court erred in granting defendants' motion for summary disposition.

Reversed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff